RETURN TO:
PREMIER ESCROW, LLC
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NASHVILLE, TN 37215

BOX 10-A

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOMES ON WHITNEY AVENUE, A HORIZONTAL PROPERTY REGIME WITH PRIVATE ELEMENTS

**THIS DECLARATION** made and entered into by BLACKACRE DEVELOPMENT COMPANY, LLC, a Tennessee Limited Liability Company hereinafter referred to as the "Developer".

## WITNESSETH:

**WHEREAS,** the Developer is the record owner and holder of the legal title of a tract or parcel of real property located in Davidson County, Tennessee, and more particularly described on Exhibit "A" attached and made a part hereto (hereinafter referred hereto as the "Property"); and,

**WHEREAS,** the Developer desires to submit the Property described on Exhibit "A" together with all buildings, structures, improvements, and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Horizontal Property Act of the State of Tennessee as the same may be amended from time to time for the express purpose of establishing thereon a horizontal property regime to be known as Homes ON WHITNEY AVENUE; and,

**WHEREAS,** the Developer further desires to establish for their own benefit and for the mutual benefit of all future owners and/or occupants of the Property or any part thereof, certain rights, easements, and privileges in, over and upon the said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

**NOW, THEREFORE,** the Developer declares as follows:

1. **Definitions.** As used herein, unless the context otherwise requires:

(a) "Act" means the Horizontal Property Act of the State of Tennessee, Tennessee Code Annotated, Section 66-27-101, et seq., as the same may be amended from time to time.

(b) "Association" means Homes ON WHITNEY AVENUE Corporation, a Tennessee not-for-profit corporation.

(c) "Board" means the Board of Directors of Homes ON WHITNEY AVENUE Corporation, a Tennessee not-for-profit corporation.

(d) "Buildings" mean the buildings located on the parcel and forming a part of the property and containing the Units. The buildings are delineated on the Plat.

(e) "By-Laws" mean the By-Laws of the Homes ON WHITNEY AVENUE Corporation attached hereto as **Exhibit "C"** and made a part hereof, as amended from time to time. For purposes of the Act, all provisions contained in the body of this Declaration dealing with the administration and maintenance of the property shall be deemed to be part of the By-Laws.

(f) "Common Elements" shall mean and include General Common Elements and Limited Common Elements as those terms are as defined herein.

(g) "General Common Elements" shall mean all of the property, except the Units and Private Elements, not including Limited Common Elements.

(h) "Limited Common Elements" shall mean those portions of the General Common Elements designated herein for the exclusive use of the one (1) Unit to which it is assigned.

(i) "Private Elements" shall mean and include the lot area upon which the unit is located. Exclusive ownership in fee simple and use of the Private Elements for each Unit is reserved to such Unit. The area of the Private elements for each Unit is shown on the Plat. Limited Common Elements located on Private Elements shall be deemed to be private elements. If applicable, Lots, as referenced on the plat, shall be deemed to refer to the private elements.

(j) "Majority" or "majority of the Unit Owners" mean at least fifty-one (51%) percent of the Owners of the Units.

(k) "Declaration" means this instrument as amended from time to time.

(l) "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

(m) "Parcel" means the parcel(s) or tract(s) of real estate described on Exhibit "A" attached to this Declaration and submitted hereby to the provisions of the Act.

(n) "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

(o) "Plat" means the Plat, Plats of survey or site plans of the Parcel or Parcels submitted to the provisions of the Act showing the number of each Unit and the exterior boundary of its private

elements and other data necessary for identification, said Plat or Plats being attached hereto as Exhibit "B".

(p) "Property" means all the land, property and space comprising the Parcel as defined in Item (m) above, and all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures, and equipment intended for the mutual use, benefit or enjoyment of Unit Owners, submitted to the provisions of the Act.

(q) "Record" or "Recording" refers to the record or recording in the Register's Office for Davidson County, Tennessee.

(r) "Rules and regulations" refer to the rules and regulations concerning the use of the Units and the Common Elements, as adopted from time to time by the Board in accordance with the Declaration and By-Laws.

(s) "Unit" shall mean a portion of the Property as shown and designated in the Plat for separate ownership and shall include the Private Elements and the residence and improvements now and hereafter located hereon. The Units are identified by a number or alphabetic letter (or combination thereof) on the Plat and may be held and conveyed by reference to such number or letter. Conveyance of a Unit shall automatically convey the undivided membership of each Unit Owner in the Association. Any Unit may be jointly or commonly owned in any state recognized under applicable law. For purposes herein, the term "Unit" shall equate to the same meaning as the term "apartment" in the Horizontal Property Act.

(t) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit, its respective Private Elements and shall be deemed the same as "co-owner" under the Act. Unless specifically provided otherwise herein, Developer shall be deemed a Unit Owner so long as he is the legal title holder of any Unit.

2. **Submission of Property to the Act.** The Developer does hereby submit and subject Property as shown on the attached plat to the provisions of the Horizontal Property Act of the State of Tennessee as amended from time to time and does hereby establish a Horizontal Property Regime to be known as Homes ON WHITNEY AVENUE.

3. **Plat.** The Plat or site plan sets forth the numbers and/or letters and location of each Unit and other data as required by the Act.

4. **Units.** The legal description of each Unit shall consist of the identifying letter or number of each Unit (or combination) as shown on the Plat. Every deed, lease, mortgage, deed of trust, or other instrument shall legally describe a Unit by its identifying letter or number as shown on the Plat and every such description by letter or number shall be deemed good and sufficient for all purposes, as provided in the Act. Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree

or otherwise, subdivide or in any other manner cause his Unit to be separated into tracts or parcels different from the whole Unit as shown on the Plat.

5. (a) **Association of Unit Owners and Administration and Operation of the Property.** There has been formed an Association having the name Homes ON WHITNEY AVENUE Corporation, a Tennessee not-for-profit corporation, which Association shall be the governing body for all Unit owners, and shall be operated to provide guidelines for the maintenance, repair, replacement, administration, and operation of the property, as provided in the Act, this Declaration and the By-Laws. The Unit Owners shall be members of the Association, with each Unit holding an undivided membership interest appurtenant to a Unit being in an equal share, subject to the provisions concerning voting hereinafter set forth. The By-Laws for the Association shall be the By-Laws attached to this Declaration as Exhibit "C" and made a part hereof. The Board of Directors of the Association shall be elected and serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and any funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners, in accordance with the provisions of this declaration and By-Laws. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner. Upon the conveyance or transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be divided among the respective Unit Owners with one (1) vote granted to each Unit (except that the Developer shall have three (3) votes per Unit as provided below).

**(b) Voting Membership**

**Class A.** Class A members shall be all Unit Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Unit owned. When more than one person holds any interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any unit.

**Class B.** The Class B member shall be the developer and shall be entitled to three (3) votes for each Unit owned. The class B membership shall cease once both Developer owned Units are sold to owner occupants.

**(c) Management of the Property.** The Board shall have the authority to engage the services of an agent (the "Managing Agent") to maintain, repair, replace, administer and operate the property, or any part thereof, to the extent deemed advisable by the Board, subject to the provisions of

subparagraph (d) below. Said agent shall be required to maintain fidelity bond coverage on its employees handling Association Funds. The cost of said services shall be a common expense.

(d) **Initial Management Contract.** First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Developer (if applicable) on behalf of the Association, and a management corporation, to act as Managing Agent for the Property, for a term as approved by the First Board, but not to exceed one year.

(e) **Use by the Builder.** During the period of sale by the Developer (and or any builders of any Units), the Developer and/or any such builder or their agents, employees, contractors, etc. shall be entitled to access, ingress, egress from the buildings and property as may be required for purposes of sale of the Units.

(f) **Non-Liability of the Directors, Board, Officer and Developer.** To the extent permitted by law, neither the directors nor officers of the Association shall be personally liable to Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. Unit Owners shall indemnify and hold harmless each of the directors or officers and their respective heirs, executors, administrators, successors and assigns in accordance with the Charter of the Association and By-Laws.

6 **Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration or By-Laws, the determination thereof by the Board shall be final and binding on all Unit Owners.

7 **Ownership of the Common Elements.** Ownership of the Common Elements shall be vested in the Association.

8. **Use of the Common Elements.** Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, if applicable, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend not only to each Unit Owner, but also to his agent, servants, tenants, family members, customers, invitees, and licenses. However, each Unit Owner shall have the right to the exclusive use and possession of the Private Elements and Limited Common Elements, and shall be used by each respective Unit Owner, and shall be used by such Unit Owner(s) subject to the Rules and Regulations of the Association.

9. **Storage Areas and Parking Spaces.** Parking shall be subject to such rules and regulations as the Board may prescribe, if applicable.

10. (a) **Common Expenses and Enforcement.** Except as specifically provided otherwise herein, each Unit Owner shall pay an equal share of the expenses of the administration and operation of the

Common Elements and of any other expenses incurred in conformance with these Declarations and Bylaws (which expenses are herein sometimes referred to as "common expenses"), including, but not limited to, the maintenance and repair thereof and any and all replacements and additions thereto. Payment of common expenses, including any prepayment thereof required by any contract for a sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the common expenses by waiver or non-use of enjoyment of the Common Elements, or by abandonment of such Owner's Unit. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof, together with interest thereon at the rate of Ten percent (10%) per annum, after said common expenses become due and payable, shall constitute a lien on the interest of such Unit Owner in the Unit as provided in the Act. Each assessment for common expenses against a Unit shall also be the personal obligation of the Unit Owner at the time the assessment is due. A successor in title to a Unit shall not be personally obligated to pay any unpaid assessments for common expenses which have been levied against a Unit unless such successor in title expressly assumes the payment of the same, provided, however, any lien encumbering a Unit as above described shall not be affected by transfer of a Unit.

The Developer shall not be required to expend from its own funds any sums of money for maintenance, improvements, or any other expenses of the administration of the Common Elements, and no Unit owned by the Developer shall be assessed for common expenses, or otherwise, until such time as construction of such Unit is completed and occupied by a tenant of Developer, or is sold by the Developer. This paragraph of Section 10(a) may not be modified or amended without the unanimous written consent of all Unit Owners.

**(b) Enforcement**. In the event any Unit Owner fails to maintain such Owner's Unit, including its Private Elements, or the Limited Common Elements attributable to such Unit, if said Limited Common Elements maintenance responsibility shall be designated to the applicable Unit Owner, or in the event any Unit Owner fails to pay such Owner's proportionate share of any common expense when such is due, then in any such event the Board may after ten (10) days' notice to the defaulting Unit Owner, perform such maintenance, advance and pay such sums, or do any other reasonable act necessary to cure such default. The Association shall have a lien against the Unit of the defaulting Unit Owner securing payment of the sums expended or advanced, and shall be entitled to enforce such lien by filing suit in a court of competent jurisdiction. In the event the Association is successful in such suit, it shall be entitled to recover reasonable attorney fees and costs incurred in such suit and enforcement of its rights.

**(c) Deed of Trust Protection**. The lien for common expenses payable by a Unit Owner shall be subordinate to the lien of a recorded deed of trust on the interest of such Unit Owner, except for the

amount of the proportionate share of common expenses which become due and payable from and after the date on which the beneficiary thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses on its deed of trust. This Subsection (c) shall not be amended, changed, modified or rescinded without the prior written consent of all deed of trust beneficiaries of record.

(d) **Special Assessments**. In addition to the annual assessments for common expenses authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Unit Owners.

11. **Mortgages and Deeds of Trust.** Each Unit Owner shall have the right, subject to the provisions herein, to mortgage his Unit together with his respective ownership interest in the Association. No Unit Owner shall have the right or authority to mortgage or place a lien on the Property or any part thereof, except to the extent of his own Unit and its interest in the Association.

12. **Separate Real Estate Taxes.** Real estate taxes shall be separately taxed to each Unit Owner for his Unit and its Private Elements and its corresponding interest in the Association, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner by the property assessor, but rather are taxed on the property as a whole, then each Unit Owner shall pay its proportionate share thereof in accordance with such unit owners respective percentage of ownership interest in the Association, and, in said event, such taxes shall be deemed a common expense.

13. **Insurance, Damage and Reconstruction.** The Board may obtain insurance for the Property and the Common Elements against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions, for the full insurable replacement cost of the Property and the Common Elements, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the Property and Common Elements, or any part thereof, to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Board, as the Trustee for the Unit Owner in proportion to the Unit Owners' respective percentages of ownership in the Property and Common Elements, as set forth in this Declaration, and for the holders of mortgages on the Units, if any. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against the Unit Owners. The premiums for such insurance shall be a common expense; however, premiums for such insurance shall be separately billed equally to Unit Owners.

In the event of damage to or destruction of any of the Property or Common Elements as a result of fire or other casualty covered by insurance proceeds (unless more than two-thirds (2/3) of all

buildings require reconstruction), the Board shall, in its sole and absolute discretion, determine and without intervention of any Unit Owner arrange for the prompt repair and restoration of the damaged portions of the Property and Common Elements substantially in accordance with the original plans and specifications therefore. Where the insurance indemnity is insufficient to cover the cost of such repairs and restoration, the deficit shall be paid by all Unit Owners with each Unit Owner to bear an equal proportion thereof. Notwithstanding the above, unless the Board does carry hazard insurance on the Property and Common Elements, the Board shall not be responsible for the repair, replacement or restoration of any Unit or Private Elements for which the responsibility of maintenance and repair is that of a Unit Owner, or for furniture, furnishings, fixtures, appliances, or equipment installed in the Unit by a Unit Owner or occupant.

**The Board may obtain comprehensive public liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance in such amounts as it deems desirable, insuring each Unit Owner, mortgagee of record, the Association, its officers, directors, and employees, Owner, and the Managing Agent, if any, from liability in connection with the Property. The premiums for such insurance shall be common expenses; however, premiums for such insurance may be separately billed equally to each Unit Owner if the Board so desires.**

The Board may also obtain Fidelity Coverage covering officers, directors and employees who handle or are responsible for handling Association funds. Such bonds shall be in such amounts as the Board may determine, but in no event less than one hundred fifty percent (150%) of the monthly operating expenses of the Association, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

The Board may also obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the property and each member of the Board and officer of the Association, and each member of any committee appointed pursuant to the By-Laws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee.

In the event the Board does not maintain insurance on the Units and the Private Elements, each Unit Owner shall be responsible for obtaining hazard insurance which includes liability coverage on his Unit, contents of his Unit and Private Elements, as well as his additions and improvements thereto, and those parts of the Unit for which the responsibility of maintenance and repair is that of the Unit Owner, and for decorations, furnishings, and personal property therein, and personal property stored elsewhere on the property, if any. **Each Unit Owner shall be required to list the Association as an additional insured on said Unit's hazard insurance policy.**

14. **Maintenance, Repairs, Replacements and Easements.** Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within and to the exterior of his Unit and its Private Elements and Limited Common Elements.

If, due to the act or neglect of a Unit Owner, or of his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Private Elements or limited common elements owned by others, or if general maintenance of utility lines, etc are required and such repair or damage is on another unit owner's private elements or limited common elements, then the Unit Owner which caused or necessitated the damage shall pay for such damage to the other unit owner's Limited Common Elements or Private Elements.

A joint and mutual easement hereby exists for any installation, maintenance, repair and replacement of any and all pipes, wires, conduits, or other utility lines running through or around any Unit's Private Elements or Limited Common Elements, if applicable. An easement exists for ingress and egress and maintenance in favor of any public utility providing utility services to the Units and to each Unit Owner if necessary to maintain their Unit by accessing the other unit's Private Elements or Limited Common Elements. Reasonable notice to access the adjoining Unit's Private Elements or Limited Common Elements shall be given to the affected Unit Owner unless access is required due to emergency circumstances.

15. **Alterations, Additions or Improvements and Architectural Control.** No alteration of any General Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. The Board may authorize alterations, additions and improvements of the General Common Elements, if any, as provided in the By-Laws. Any Unit Owner may make alterations, additions or improvements within his Unit, Private Elements and Limited Common Elements without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the General Common Elements, if any, Limited Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements. Any changes to the exterior of the homes shall be in keeping with the architectural style and construction quality of the homes as originally built.

16. **Decorating.** Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating and maintenance pertaining to his Unit and the Private and Limited Common Elements serving his Unit, as may be required from time to time.

17. **Encroachments.** If any portions of the Common Elements shall actually encroach upon any Unit or its Private Elements or Limited Common Elements, or if any Unit or its Private Elements or Limited Common Elements shall actually encroach upon any portions of the Common Elements, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and

the respective Unit Owners involved, to the extent of such encroachments, so long as the same shall exist.

18. **Use and Occupancy Restrictions.** Subject to the provisions of the By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the property was designed and as allowed by zoning laws. Renting short term or leasing of units shall be permitted so long as in compliance with zoning, codes, Metro Nashville ordinances, etc.

19. **Remedies.** In the event of any violation of the provisions of the Act, this Declaration, By-Laws, or rules and regulations of the Association by any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit), the Association, or its successors or assigns, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, By-Laws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as provided hereinafter in this Paragraph No. 19, or for any combination of remedies, or for any other relief. All expenses in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of Fifteen percent (15%) per annum or such other uniform lawful rate as the Board shall determine, until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Board or Paying Unit Owner shall have a lien for all of the same, as well as for nonpayment of common expenses, upon the Unit, and its appurtenant interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property; provided, however, that such lien shall be subordinate to the lien of a recorded first mortgage or deed of trust on the Unit, to the extent herein able set forth in Paragraph No. 10 (b) hereof. In the event of any such default by a Unit Owner, the Board and/or Paying Unit Owner, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board. This Paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgage and deed of trust liens against the Units.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Declaration: (a) to enter (either peaceably or forcibly without liability to such Unit Owner for such entry) upon the Unit, or any portion of the property upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to take possession (either peaceably or forcibly without liability to such Unit Owner for such entry) of such Unit Owner's interest in the property and to maintain an action for possession of such Unit in the manner provided by law.

If any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate the Act, or any of the covenants or restrictions or provisions of this Declaration, the By-Laws, or the regulations adopted by the Board, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner in writing from the Board or Paying Unit Owner, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of said defaulting Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against such defaulting Owner or Occupant, or in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use, or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Property shall be sold (subject to the lien of any existing deed of trust or mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxes against said defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder, or any liens, shall be paid to said defaulting Unit Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so

provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration.

20. **Amendments.**

**(a) Amendments Annexing Additional Phases.** N/A

**(b) Other Amendments.** The provisions of this Declaration may be amended by an instrument in writing, setting forth such amendment, signed by sixty-seven (67%) percent of the Unit Owners; provided, however, that all lien holders of record have been notified by certified mail of such amendment, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument.

However, if the Act, this Declaration or the By-Laws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument amending any provision of this Declaration with respect to such action shall be signed by all Unit Owners and/or all lien holders or both as required by the Act or this Declaration. Any amendment shall be effective upon the recording of such instrument in the Office of the Register of Davidson County, Tennessee; provided, however, that no provisions in this Declaration may be amended so as to conflict with the provisions of the Act.

Notwithstanding the above, the Developer shall have the right to make and record any necessary amendment to this instrument for the express purpose of completion of development or correction of clerical errors, or as may be required to obtain FHA/VA, FNMA and/or FHLMC approval for the horizontal property regime.

21. **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, when such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the Governor of Tennessee holding office as of the date of this Declaration.

22. **Rights and Obligations.** Each Grantee of Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration. All future Unit Owners and Occupants shall be subject to and shall comply with the provisions of this Declaration. Any restrictions or rules in the By-Laws which are more than administrative in nature such as, but not limited to, reservations and future rights of Developer are hereby incorporated into and made a part of this Declaration by reference. All rights, benefits and privileges hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such grantee in like manner

as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All present and future Unit Owners and Occupants of a Unit shall be subject to, and shall comply with, the provisions of the By-Laws appended hereto and recorded herewith, pursuant to Tennessee Code Annotated, Section 66-27-111, as they may be amended from time to time. The acceptance of a deed of conveyance, devise, or lease to a Unit, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the By-Laws, and any Rules and Regulations promulgated thereunder, as they may be amended from time to time, are assumed, accepted and ratified by such Unit Owner or Occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

The terms and conditions of the Declaration, By-Laws, and rules and regulations of the Association may be incorporated by reference in, and become part of, the agreement between any first mortgagee and any present or future Unit Owner who enters into such an agreement with a first mortgagee. When so incorporated, any default in the terms and conditions of this Declaration, By-Laws, and rules and regulations may be considered by the first mortgagee as a default, whereupon said first mortgagee, after exercising its option to declare a default, shall then have all of the rights and privileges arising as a result of a default under its agreement with said Unit Owner.

23. **Condemnation.** In the event of a taking of part of the Common Elements in condemnation or by eminent domain, the award made for such taking shall be payable to the Association. If a majority of the Board in their sole and absolute discretion approve the repair and restoration of such Common Elements, the Board shall arrange for the repair and restoration of such Common Elements, and the Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event the Board does not approve the repair and commence restoration of such Common Elements within one hundred twenty (120) days after taking by the public or private authority, the Board shall disburse the net proceeds of such award on the basis of such Unit's percentage of ownership in the Common Elements.

24. **Rights Reserved.** Unit Owner's right of enjoyment in the Common Elements shall be subject to:

The right of the Association, as provided in its By-Laws or rules and regulations, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations; The right of the Association to charge reasonable fees for the use of any part or parts of the Common

Elements; The right of the Association to diminish in any way or to dedicate or transfer all or any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the members entitled to vote thereon, provided that no such diminution or dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless both members of the Association have agreed to such dedication, transfer, purpose, or condition; The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper servicing and maintenance of the Common Elements and the Units.

25. **Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Regulations.** Notwithstanding anything to the contrary contained in this Declaration or in the By-Laws of the Association, all terms, conditions, regulations, and requirements which are now existing, or which may be amended from time to time by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to Planned Unit Developments or condominiums, if applicable, are hereby incorporated as terms and conditions of this Declaration and By-Laws and such shall be governing upon the Property, Developer, and the Association, so long as such terms or conditions are not inconsistent with the laws of the State of Tennessee as found in T.C.A., Section 66-27-101, et seq., as amended.

Specifically, without limitation upon the foregoing, the following declarations shall be controlling over any terms of this Declaration or By-Laws which are in conflict therewith. Any portions of this Declaration or By-Laws which are in conflict with this paragraph, or any portion of the regulations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, pertaining to apartments, are hereby deleted and the following rights of mortgagees are itemized as follows:

(a) A first mortgagee of a Unit at his request is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under this Declaration, By-Laws, or any of the townhome documents, which is not cured within thirty (30) days.

(b) Any first mortgagee of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, or deed of trust, or by foreclosure of the mortgage or deed of trust, or by deed in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata real location of such assessments or charges to all Units including the mortgaged Unit).

(c) Unless all of the first mortgagees (based upon one (1) vote for each mortgage owned) of Units have given their prior written approval, the Association shall not be entitled to:

(i)Change the pro rata interest or obligations of any Unit for (a) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and for (b) determining the pro rata share of each Unit in appurtenant real estate and any improvements thereon, which are owned by Unit Owners in undivided pro rata interests (Common Elements);

(ii) Use hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement or reconstruction of such improvements, except as provided by T.C.A. Section 66-27-118, in case of substantial loss to the Common Elements.

(d) First mortgagees shall have the right to examine the books and records of the Association.

(e) An adequate reserve fund for the replacement of the Common Elements will be established and funded by regular monthly payments rather than by special assessments.

(f) As set forth in T.C.A., Section 66-27-120, all taxes, assessments, and charges which may become liens prior to the first mortgage under the laws of the State of Tennessee shall relate only to the Unit and not to the property as a whole.

(g) No Unit Owner, or any other party, shall have priority over any rights of the first mortgagees of Units in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

(h) Any agreement for professional management of the property, whether it be by Owner, her successors and assigns, or any other person or entity, may be terminated on ninety (90) days' written notice, and the terms of any such contract shall so provide and shall not be of a duration in excess of three (3) years.

(i) The Association shall give to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, or any lending institution servicing such mortgages as are acquired or insured by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Bank Board, notice in writing of any loss to or the taking of Common Elements if such loss or taking exceeds Ten Thousand ($10,000.00) Dollars. The Association may rely upon the information contained in the book entitled "Mortgage of Units" as must be established pursuant to the By-Laws, for a list of mortgagees to be notified hereby.

(j) The interest of a first mortgagee in a mortgaged Unit shall be superior to the interests of any person, group, partnership, corporation, or entity of any kind, including any interest the Association, Developer, or any Unit Owner may have in any portion of the Property, regardless of the nature of the interest or the manner in which it is acquired.

(k) Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to an institutional first mortgagee under its deed of trust, and under the laws of the State of Tennessee.

26. **Trustee as Unit Owner.** In the event title to any Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this declaration against such Unit.
27. **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall be addressed to the Association, as indicated on Charter with the Secretary of State or at such other address as hereinafter provided. The Association may designate a different address or addresses for notices to it by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.
28. **Severability.** If any provision of this Declaration or By-Laws, or any section, sentence, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the By-Laws and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby, and the remainder of this Declaration of the By-Laws shall be construed as if such invalid part was never included therein.
30. **Captions.** The captions herein are inserted only as a matter of convenience, and in no way define, limit or describe the scope of these provisions or the intent of any provision hereof.
31. **Gender.** The use of the masculine gender in this Declaration and in the By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.
32. **Attorney's Certificate.** The attorney's opinion as required under the terms of the TCA, Section 66-27-103 is attached hereto as Exhibit "D" and made a part hereof.

**IN WITNESS WHEREOF,** the undersigned has executed this Declaration this 29th day of October 2019.

**DEVELOPER:**

BLACKACRE DEVELOPMENT COMPANY, LLC,
a Tennessee Limited Liability Company

BY: _____
Kevin D. Montgomery, Authorized Agent

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Kevin D. Montgomery, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Authorized Agent of the maker or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

**WITNESS** my hand, at office, this 29th day of October, 2019.

_____
Notary Public

My Commission Expires: _____

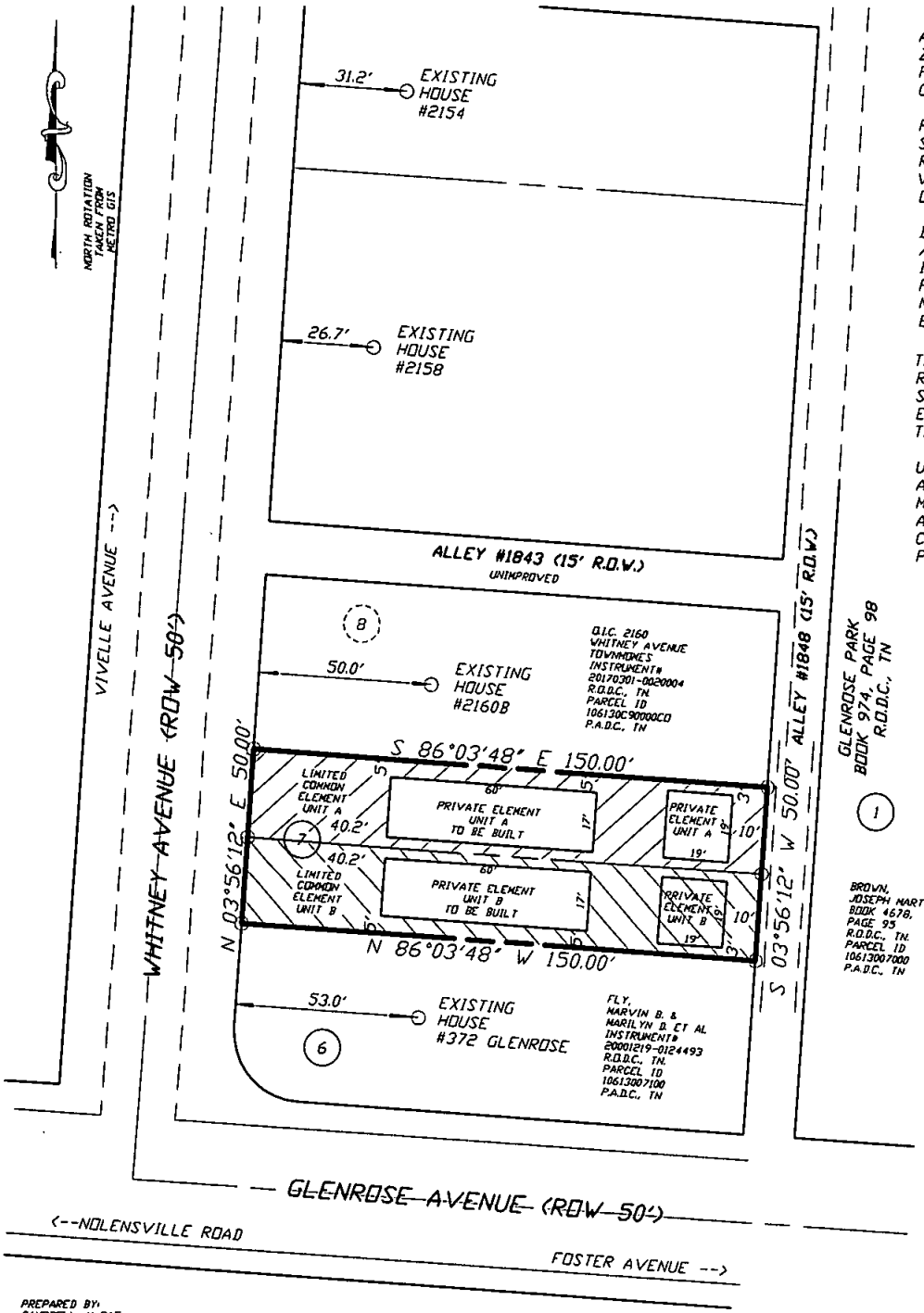
TONYA B. CHERRY
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY, TENN
My Commission Expires August 30, 2021

**EXHIBIT A**

Land in Davidson County, Tennessee, being Lot No. 7 on the Plan of the Subdivision of the Jane Watkins Tract, of record in Plat Book 2, page 108, in the Register's Office for Davidson County, Tennessee, to which plan reference is hereby made for a more complete description of the property.

Being the same property conveyed to Blackacre Development Company, LLC, a Tennessee limited liability company by Warranty Deed of record in Instrument No. 20190911-0091722, said Register's Office.

# EXHIBIT B




ACCORDING TO METRO GIS MAPS PROPERTY IS ZONED R6. SETBACKS FOR R6 ZONING TAKEN FROM DISTRICT BULK TABLES TITLE 17 "ZONING" CHAPTER 17.12

FRONT = STREET AVERAGE,
SIDES = 5'
REAR = 20'
VERIFY SETBACKS WITH CODES BEFORE DESIGN OR CONSTRUCTION DECISIONS ARE MADE.

BY GRAPHIC SCALING FROM THE LATEST F.E.M.A. / FLOOD INSURANCE RATE MAP THIS PROPERTY IS NOT LOCATED IN A F.E.M.A. / F.I.R.M SPECIAL FLOOD HAZARD AREA.
MAP 47037C PANEL 0244 "H"
EFFECTIVE DATE = 4-5-2017

THIS EXHIBIT WAS PREPARED FROM THE LATEST RECORDED DEED DESCRIPTION. THIS EXHIBIT IS SUBJECT TO THE FINDINGS OF A CURRENT TITLE EXAMINATION. NO TITLE REPORT WAS PROVIDED TO SURVEYOR.

UTILITIES SHOWN WERE TAKEN FROM PUBLIC AS-BUILT RECORDS & FIELD LOCATION. THERE MAY BE UTILITIES OR EASEMENTS PRESENT THAT ARE NOT SHOWN ON THIS EXHIBIT. CONTACT THE TENNESSEE ONE CALL SYSTEM PRIOR TO ANY CONSTRUCTION OR DIGGING.

LEGEND
W=WATER LINE (RECORD)
S= SEWER LINE (RECORD)
OHL=OVERHEAD LINES
E/P =EDGE PAVEMENT
U/P =UTILITY POLE
F.H. =FIRE HYDRANT
M.B.S.L. =MINIMUM BUILDING SETBACK LINE

PREPARED BY:
CAMPBELL, McRAE & ASSOCIATES, SURVEYING, INC.
P.O. BOX 41153
NASHVILLE, TN, 37204
PH. 615-298-2424
EMAIL cmsa@att.net

JOHN ALAN HOOD REGISTERED LAND SURVEYOR TENNESSEE NO. 1838

THIS EXHIBIT WAS DONE UNDER THE AUTHORITY OF TCA 62-18-126 AND IS NOT A GENERAL PROPERTY SURVEY AS DEFINED UNDER RULE 0820-3-.07. CHAPTER 0820-3 STANDARDS OF PRACTICE, RULES OF THE TENNESSEE BOARD OF EXAMINERS FOR LAND SURVEYORS. THIS EXHIBIT CONTAINS ALL INFORMATION REQUIRED BY TCA SECTION 66-27-309.

JOHN ALAN HOOD TN. R.L.S.#1838

50' 0 50' 100'
GRAPHIC SCALE (IN FEET)
1"= 50'

**HPR EXHIBIT MAP**
LOT NO. 7 ON THE SUBDIVISION OF JANE WATKINS TRACT
PLAN BOOK 2, PAGE 108
CHANCERY COURT, DAVIDSON COUNTY TENNESSEE
**PROPERTY LOCATED**
17TH COUNCIL DISTRICT OF NASHVILLE, DAVIDSON COUNTY TENNESSEE
ON THE EASTERLY MARGIN OF WHITNEY AVENUE, NORTH OF GLENROSE AVENUE
**PROPERTY ADDRESS:**
2162 WHITNEY AVENUE
NASHVILLE, TN, 37210
**DEED REFERENCE:**
INSTRUMENT #
20040505-0051330
R.O.D.C., TN.
**ORIGINAL PARCEL ID**
10613007200
P.A.D.C., TN.
**DATE:** 8-6-2019
**SCALE:** 1" = 60'
**PREPARED FOR:**
JEREMY ODOM

# EXHIBIT "C"

## BY-LAWS OF

## HOMES ON WHITNEY AVENUE CORPORATION

### ARTICLE I

### Members (Unit Owners)

**Section 1. Eligibility**. The members of Homes ON WHITNEY AVENUE Corporation, a Tennessee not-for-profit corporation, shall consist of the Unit Owners of the property know as Homes ON WHITNEY AVENUE located at Nashville, Davidson County, Tennessee (the "property").

**Section 2. Secession**. The membership of each Unit Owner shall terminate when he ceases to be a Unit Owner, and upon the sale, transfer, or other disposition of his ownership interest in the property, his membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

**Section 3. Regular Meetings**. The first regular meeting of the Unit Owners (the "First Meeting") may be held, subject to the terms hereof on any date, at the option of the Board. All such meetings of Unit Owners shall be held at such place in Davidson County, Tennessee, and at such time as specified in the written notice of such meeting which shall be delivered to all Unit Owners at least ten (10) days prior to the date of such meeting.

**Section 4. Special Meetings**. Special meeting of Unit Owners may be called by a majority of the Unit Owner. Special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days prior to the date of the meeting, stating the date, time and place of the special meeting and the matters to be considered.

**Section 5. Delivery of Notice of Meetings**. Notices of meetings shall be delivered either personally or by mail to Unit Owners at the addresses given to the Board by Unit Owners for such purpose, or to a Unit Owner's unit if no separate address for such purpose has been given to the Board.

**Section 6. Voting**. Each Unit shall have one (1) vote, except as to the Developer which shall have three (3) votes for each unit it owns until such time as the Developer owned Units are sold to owner occupants. If any Unit Owner consists of more than one (1) person, the voting rights of such Unit Owner shall not be divided but shall be exercised as if the Unit Owner consisted of only one (1) person in accordance with the proxy or other designation made by the persons constituting such Unit Owner.

**Section 7. Quorum**. A quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented in person or by proxy and holding a majority of the votes entitled to be case at such meeting.

## ARTICLE II

### Board of Directors

**Section 1. Number, Election and Term of Office**. The Board of Directors of the Association (referred to in the Horizontal Property Act of the State of Tennessee as the "board of administrators" and sometimes referred to herein as the "Board") shall consist of two (2) members (hereinafter referred to as "Directors").

**Section 2. Qualification**. The Directors shall consist of each Unit Owner or spouse of each Unit Owner. Should any Unit Owner Director transfer title to his or her Unit, the respective successor Unit Owner shall assume the transferor's position as Director. If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.

**Section 3. Vacancies**. Any vacancy occurring in the board shall be filled by majority vote of the remaining members thereof. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director whom he succeeds.

**Section 4. Meetings**. A regular annual meeting of the Board shall be held following the regular annual meeting of Unit Owners, Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Directors attendance at a meeting shall constitute his waiver of notice of said meeting.

**Section 5. Removal**. Any non-Unit Owner Director may be removed from office with or without cause by the vote of a majority of the Unit Owners.

**Section 6. Compensation**. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by Unit Owners.

**Section 7. Quorum**. A simple majority of Directors shall constitute a quorum.

**Section 8. Powers and Duties**. The Board shall have the following powers and duties:

a) To elect and remove the officers of the Association;

b) To administer the affairs of the Association and the property;

c) To engage the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer, and operate the property or any part thereof for all Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve;

d) To formulate policies for the administration, management and operation of the property and the Common Elements;

e) To adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the property and the Common Elements, and to amend such rules and regulations from time to time and to establish reasonable financial assessments for infractions thereof;

f) To provide for the maintenance, repair and replacement of the Common Elements and payments therefore, and to approve payment vouchers or to delegate such approval to the officers or the manager or Managing Agent;

g) To provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the property and the Common Elements, and to delegate any such powers to the Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);

h) To appoint committees of the board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

i) To determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

j) To fix the estimated annual budget, and to provide the manner of assessing and collecting from Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

k) To borrow money for the purpose of repair or restoration of Common Elements without the approval of the members of the Association;

l) To secure insurance policies as required by the Declaration, and in this regard, annually to review the amounts of coverage afforded by such policies;

m) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of Unit Owners as expressed in resolutions duly adopted at any annual or special meeting of Unit Owners;

n) To be responsible for and maintain all streets, roads, utilities, and any other services of a public nature that are classified as Common Elements in the Declaration.

o) To exercise all other powers and duties of Unit Owners as a group referred to in the Horizontal Property Act of the State of Tennessee or in the Declaration or these By-Laws.

**Section 9. Power to Take Any Action**. Whenever in these By-Laws the Association is given the power to take any action, it is the intention of these By-Laws that the Board shall act for the Association in all cases, except and to the extent that it is expressly provided that action be taken upon vote of the Unit Owners.

**Section 10.** **Non-Delegation**. Nothing in these By-Laws shall be considered to grant to the Board, the Association, or to the officers of the Association, any powers or duties which, by law, have been delegated to Unit Owners.

## ARTICLE III

## Officers

**Section 1.** **Designation**. At each regular annual meeting of the Board, the Directors present at such meeting shall elect the following officers of the Association by a majority vote:

a) A President, who shall be a Director, who shall preside over meetings of the Board and of Unit Owners, and who shall be the chief executive officer of the Association;

b) A Secretary/Treasurer, who shall keep the minutes of all meetings of the Board and of Unit Owners, financial records, and who shall, in general, perform all the duties incident to the office of Secretary/Treasurer;

c) Such additional officers as the Board shall see fit to elect.

**Section 2.** **Powers**. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit.

**Section 3.** **Term of Office**. Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

**Section 4.** **Vacancies**. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any Director so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by vote of two-thirds (2/3) of the total membership of the Board at a special meeting thereof.

**Section 5.** **Compensation**. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by Unit Owners.

## ARTICLE IV

## Assessments

**Section 1.** **Annual Budget**. The Board shall establish an annual budget to provide for the needs of the units. Such budget shall take into account the estimated common expenses and cash requirements for the year, including, but not limited to, salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, and all other common expenses.

**Section 2.** **Lien**. It shall be the duty of every Unit Owner to pay his equal share of the expenses as provided in the Declaration, and as assessed in the manner provided.

If any Unit Owner shall fail or refuse to make any such payment when due, such delinquent payment shall be subject to a late charge in an amount established by the Board, and such delinquent payment shall also bear interest at the highest permissible rate of interest allowed in the State of Tennessee. Such delinquent payment, together with penalty and interest, shall constitute a lien, as provided in the Act and Declaration, enforceable by the Board and/or Paying Unit Owner, on the interest of such Unit Owner in the property.

The Association, acting through the Board or its agents, shall have the right to maintain a suit to foreclose any such lien, and there shall be added to the amount due the costs of said suit and other fees and expenses, together with legal interest and reasonable attorney's fees to be fixed by the court. Furthermore, if any Unit Owner shall fail or refuse to pay when due his proportionate share of the expenses, the Association, acting through its Board, shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Horizontal Property Act, the Declaration, or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

**Section 3. Records and Statement of Account**. The Board shall cause to be kept detailed and accurate records in chronological order of expenditures affecting the Common Elements, specifying and itemizing the common expenses incurred.

**Section 4. Discharge of Liens**. The Board may cause the Association to discharge any mechanic's lien or other encumbrances which in the opinion of the Board may constitute a lien against the property or the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

## ARTICLE V

## Use and Occupancy Restrictions

**Section 1. General.** No unlawful, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others. No structure of a temporary character, trailer, motor home, boat, tent, shack, garage, barn, or other out-buildings shall be permitted on the Property at any time, temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

**Section 2. Animals.** No animals shall be raised, bred, or kept in any Unit, except for dogs, household cats and small birds owned as household pets by a Unit Owner, provided that said pet is not kept for any commercial purpose, and provided that (a) said pet shall be kept in strict accordance with the

administrative rules and regulations relating to household pets from time to time adopted or approved by the Board.

All dogs owned by Unit Owners and kept in a Unit shall be on leash or within the fenced area of a Unit's Limited Common Elements while outside the Unit. All such dogs shall be exercised by the Owner at places on the Property which do not interfere with the use and enjoyment of the same by other Owners. An Owner shall be responsible for all damage to the Limited Common Area of the other unit owner caused by said Owner's dog and the Owner shall clean up after such Owner's dog.

**Section 3. Trash.** Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations of the Board.

**Section 4. Use by Developer.** During the period of sale by the Developer of any Units, the Developer, and the Developer's agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from said Buildings and Property as may be required for purposes of said sale of Units.

**Section 5. Storage.** Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in General Common Areas, if any.

**Section 6. Wiring.** N/A

**Section 7. Architectural Control.** There shall be no changes to the exterior of the units until both units are sold by the Developer.

**Section 8. Patios.** All patios and decks shall be maintained by the owner to which area is assigned and shall be designated as a Private Element.

**Section 9. Landscaping.** Landscaping shall be maintained by the applicable Unit Owner and shall be weeded and mulched as necessary in order to maintain appropriate curb appeal for this type of development.

**Section 10. Fencing.** Except as to fencing already installed at the time of recording of these bylaws, no chain link fencing shall be allowed. Any fencing installed shall be in keeping with the quality of the Units as originally constructed.

**Section 11. Parking.** Parking shall be in the areas so designated to each Unit as prescribed herein and subject to rules and regulations of the Board, if any.

**Section 12. Rules and Regulations.** Unit Owners shall be subject to such further restrictions as may be contained rules and regulations of the Association, if applicable.

## ARTICLE VI

### Amendments

These By-Laws may be amended or modified from time to time by action or approval of a majority of the Unit Owners. Such amendments shall be recorded in the Office of the Register's Office of Davidson County, Tennessee.

## ARTICLEVII

### Mortgages

**Section 1. Interest of Valid First Mortgagee**. The interest of valid first mortgagee shall be superior to the interest of the Board in the event of a default, and nothing in this instrument shall be construed to the contrary. If the first mortgagee has incorporated the terms of these By-Laws, the Declaration and the contract in its deed of trust, then said first mortgagee may at its option declare a default in its deed of trust by reason of any default hereunder, and may proceed to enforce its rights according to the terms of the deed of trust notwithstanding any enforcement instituted by the Board.

## ARTICLE VIII

### Definition of Terms

The terms used in these By-Laws, to the extent they are defined therein, shall have the same meaning as set forth in the Declaration for Homes ON WHITNEY AVENUE, of record in the Office of the Register of Deeds for Davidson County, Tennessee.

The term "member", as used in these By-Laws, means "Unit Owner" as defined in the Declaration.

## ARTICLE XI

### Conflicts

These By-Laws are set forth to comply with the requirements of Chapter 27 of Title 66, Tennessee Code Annotated, as it may be amended from time to time, and to allow the By-Laws to control in specific situations where such law allows. In the event any of the By-Laws conflict with the provisions of said statute or of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

# EXHIBIT "D"

## TO

HOMES ON WHITNEY AVENUE

A HORIZONTAL PROPERTY REGIME

WITH PRIVATE ELEMENTS

## ATTORNEY'S CERTIFICATE

This document is intended to serve as the attorney's opinion which is required under the terms of Tennessee Code Annotated, Section 66-27-103. The undersigned, Kevin D. Montgomery, an attorney licensed to practice law in the State of Tennessee, hereby declares that all improvements shall be constructed in substantial compliance with local building codes and that upon proper recording of this certificate and the following additional documents, all legal requirements for the creation of a Planned Unit Development under the terms of the Tennessee Horizontal Property Act, Tennessee Code Annotated, Section 66-27-103 (b) et. Seq. will have been met:

1) The Declaration of Covenants, Conditions and Restrictions for Homes ON WHITNEY AVENUE, a Horizontal Property Regime with Private Elements.
2) By-Laws of Homes ON WHITNEY AVENUE Corporation (a townhouse corporation).
3) The plat for Homes ON WHITNEY AVENUE, a Horizontal Property Regime, which plat shows private elements.
4) The Charter of Homes ON WHITNEY AVENUE Corporation (a townhouse corporation).

Witness my hand this 29th day of Ocober 2019.

Kevin D. Montgomery